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6 *Attorneys for Debtors*

7 **IN THE UNITED STATES BANKRUPTCY COURT FOR THE**
8 **EASTERN DISTRICT OF CALIFORNIA (SACRAMENTO DIVISION)**

9 In re JESUS MANUEL COSIO and
10 ANGELICA MENDEZ COSIO,

11 Debtors,

No. 14-25804
DC No. JMC-1

Chapter 7

Judge Thomas C. Holman

12
13 **MOTION TO REOPEN**
BANKRUPTCY TO AMEND
SCHEDULES

15 Debtors, Jesus Manuel Cosio and Angelica Mendez Cosio, hereby move to
16 reopen the above-captioned bankruptcy case under 11 U.S.C. § 350(b) and Federal
17 Rule of Bankruptcy Procedure 5010 to amend Schedules B and C of their
18 bankruptcy to list and exempt a recently discovered pre-bankruptcy claim/asset.

19 1. Debtors recently learned of another potential asset in the bankruptcy
20 estate, a pre-petition legal claim, after they retained the instant counsel. The claim is
21 technical, and the Debtors would not have recognized they had a claim even if they
22 had full knowledge of the relevant facts. Hence, Debtors inadvertently omitted this
23 claim from the bankruptcy schedules filed with their original petition. Debtors have
24 not sought to enforce, prosecute, or collect on this claim in any way.

25 2. Motions to reopen a bankruptcy “should be routinely granted because
26 the case is necessarily reopened to consider the underlying request for relief.” *In re*
27 *Dodge*, 138 B.R. 602, 605 (Bankr. E.D. Cal. 1992) (citing *In re Corgiat*, 123 B.R.
28 388, 392, 393 (Bankr. E.D. Cal. 1991)). Where a debtor inadvertently omits a cause

1 of action in her bankruptcy schedules, “[t]he correct solution is often to reopen the
 2 bankruptcy case and order the appointment of a trustee who, as owner of the cause
 3 of action, can determine whether to deal with the cause of action for the benefit of
 4 the estate.” *In re An-Tze Cheng*, 308 B.R. 448, 460 (9th Cir. BAP 2004). In that
 5 situation,

6 [t]he expedient solution . . . is to require the parties to return to
 7 bankruptcy court for reopening so that a trustee can be appointed to
 8 deal with the cause of action that is property of the estate. The trustee
 9 has authority to act for the benefit of the estate and may sell the cause
 10 of action, prosecute it in nonbankruptcy court, settle it, or abandon it to
 11 the debtor as of inconsequential value to the estate. The worst thing the
 12 parties can do is to ignore the property of the estate problem. The
 13 worst thing a bankruptcy court can do is to frustrate the process by
 14 refusing to reopen and order the appointment of a trustee who can
 15 definitively deal with property of the estate.

16 *In re Lopez*, 283 B.R. 22, 32-33 (9th Cir. BAP 2002). Under the circumstances, it is
 17 appropriate to reopen the case so the Court can administer the newly-discovered
 18 asset. *See In re Herzog*, 96 B.R. 264, 266 (9th Cir. BAP 1989) (while “motion to
 19 reopen [bankruptcy] is addressed to the sound discretion of the bankruptcy court,”
 20 “the court has the duty to reopen an estate whenever *prima facie* proof is made that
 21 it has not been fully administered”).

22 3. As the amended schedules indicate, Debtors believe the value of this
 23 recently-discovered claim does not exceed their remaining exemptions. (The
 24 bankruptcy schedules reflect the Debtors’ maximum good faith valuation of the
 25 claim.) If the Debtors’ valuation of the claim is correct, their bankruptcy schedules
 26 should be amended to confer standing on the Debtors to freely pursue their claim. If
 27 not, the trustee should either abandon the claim to the Debtors, pursue the claim on
 28 its own, or authorize Debtors and their attorneys to prosecute the claim.

29 WHEREFORE, Debtors respectfully request the Court reopen the Debtors’
 30 bankruptcy case and appoint a trustee, and grant such other and further relief as is
 31 appropriate and just.

32 Dated: February 17, 2015

33 By: s/Zack Broslavsky

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